

**No.10- COURT'S ORDER WHETHER THE CASE IS OR IS
NOT APPROVED FOR REPORTING**

[Chapter VIII, Rule 32(2)(b)]

Description of Case

Criminal Appeal No. 774 of 2001 (Old No. 1553 of 1991)

Govind Ram alias Gopal Ram

Versus

State of U.P.

A.F.R. (Approved for Reporting)

Not Approved for Reporting

(B.S. Verma, J.)

(Irshad Hussain, J.)

Date: 28-10-2005

Initials of Judge.

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Appeal No. 774 of 2001
Old No. Criminal Appeal No. 1553 of 1991

Govind Ram alias Gopal Ram,
Son of Shiv Ram, R/O village Nar Singh Danda,
Patti Kallu Khan, Tehsil Champawat,
District Pithoragarh

...Appellant.

Versus

State of Uttar Pradesh.

...Respondent.

Sri P.S.Adhikari, Senior Adv. assisted by Sri B.S.Adhikari, Adv., learned counsel
for the appellant-accused.

Sri H.C. Pande, Learned A.G.A. for the respondent-State.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S.Verma, J.

Dated, October 28, 2005

(Per Hon'ble B.S.Verma, J.)

This criminal appeal under Section 374(2) of the Code of Criminal Procedure is directed against the judgment and order of conviction, dated 14-8-1991 passed by the then Sessions Judge Pithoragarh, in Session Trial No. 34 of 1990, State Vs. Govind Ram and two others, whereby the accused-appellant was found guilty of the offence punishable under Sections 302 and 323 of the Indian Penal Code and was accordingly convicted and sentenced to life imprisonment and one year R.I. respectively. The sentences were ordered to run concurrently.

2. Brief facts are that Roshan Lal, son of Dev Ram of village Narsing Dada lodged a written report dated 24.3.1990 (Ext. Ka-4) with Patwari Patti Kalukhan alleging therein that in the morning at about 8 a.m. Govind Ram son of Shiv Ram and his wife Kalawati Devi assaulted his brother Lalit Mohan by Chhura and Lathi after hurling abuses. His father went for his rescue. Then

Govind Ram attacked upon him with Barchha with the result he fell down on the ground and became unconscious. He ran after Govind Ram and snatched and Barchha (a sort of spear) and threw it away. Thereupon, Suresh Ram, the son of Govind Ram gave Chhura blow on his head and injured him. In the meantime, the accused ran away. The reporter brought his father to his house in an injured condition, who then succumbed to his injuries. He went to inform the Gram Pradhan, who was found at his house. On his basis of the written report, Patwari Kalukhan prepared Check F.I.R. (Ext. Ka-5) and registered a case under Sections 302, 307, 504 I.P.C. at Crime No. 1 of 1990 and then took up the investigation.

3. Sher Singh Chaudhari, Patwari Kalukhan, (P.W.5) went to the spot, he took the dead body in his custody and conducted inquest proceedings (Ext. Ka-6), which was completed by 6.30 p.m. on the same day. In the inquest proceedings, besides Roshan Lal, the reporter (PW 3), Ganga Ram, Prakash Ram, Ishwari Ram and Sundar Ram were Panch therein. At the time of inquest proceedings, the Patwari found one incised wound below the left shoulder above the chest, 1,1/2 inch x 1 inch in size on the body of deceased Dev Ram. The wound was bleeding and clotted blood was also there. No other visible injury was noticed by the Patwari. The Investigating Officer then sealed the dead body after preparing necessary papers, viz. photo Lash, Ext. Ka-7, challan Lash, Ext. Ka-8, etc., and sent it for post mortem examination through his peon Purushottam.

4. The Investigating Officer prepared the site plan (Ext. Ka-9) the same day from where dead body was recovered. He also prepared the site plan of the place of occurrence (Ext. Ka-10) therein mentioning all relevant details of the vicinity. On the same day, he collected sample of plain and blood-stained earth and prepared memo Ext. Ka-11 and also took blood stained Baniyan vide memo Ext. Ka-12. Both the accused persons were arrested by the Patwari on 9-4-1990 and arrest memo Ext. Ka-13 was prepared in that regard.

5. The autopsy on the dead body was conducted on 25.3.1990 at 3.30 p.m. by Dr. P.K.Karnatak, Medical Officer, P.H.C. Champawat. He found the following ante mortem injuries mentioned in the Post Mortem Report. Ext. Ka-3:-

“Incised wound 6 cm x 2 cm. at left deltopectoral region 4 cm. medial of the deltopectoral groove, depth pleural cavity”.

6. On internal examination membranes of brain were found congested and there was punctured wound left pleural cavity at first intercostals space at thorax. In pleura cavity about 1,1/2 lit blood was present. Left lung was found lacerated and collapsed. Both chambers of heart were empty. In the opinion of the autopsy surgeon death was the result of haemmatoma and shock caused due to left lung injury and the same was sufficient to cause death in the ordinary course of nature. The ante mortem injury was caused probably on 24.3.1990 at about 8 a.m. P.W.2, Dr. P.K.Karnatak also opined that the said injury was possible from spear.

7. Earlier, PW 1, R.S.Agarwal, the Medical Officer Primary Health Centre, Lohaghat (Pithoragarh) examined the injuries of Roshan Lal, (PW 3) son of the deceased, on 25.3.1990, at 2.35 p.m.:-

1. A lacerated wound 3.5 cm x 1 cm x skin deep situated on back of head 9 cm. above upper margin of right pinna, Margin irregular, clotted blood present.

2. An abrasion 1 cm x 0.2 cm present on palm of right hand. Scabbed.

8. In the opinion of the doctor, Injury nos. 1 and 2 were simple in nature, caused by hard and blunt object and the duration was about one day at the time of examination as mentioned in injury report Ext. Ka-1.

9. The doctor also examined Lalit Mohan (PW 4) on 25.3.1990 at 2.45 p.m. and he found the following injury on his person and prepared injury report Ext. Ka-2:-

1. A lacerated wound 2 cm. x 0.5 cm x skin deep present over center of head 11 cm. above right upper margin of pinna. Margins irregular. Clotted blood present.

10. In the opinion of the doctor, the injury was simple in nature and caused by hard and blunt object. Duration of injury was mentioned about one day at the time examination.

11. The Investigating Officer recorded statements of witnesses, sent the blood stained earth, blood stained clothes of the injured as well as deceased and blood stained weapon of assault for chemical examination and obtained the report of Forensic Science Laboratory, Agra, Ext. Ka-15. After completing necessary formalities, a charge-sheet against the accused-appellant Govind Ram alias Gopal Ram, Smt. Kalawati Devi and Suresh Ram under Sections 302, 307, 504, 506 read with Section 34 I.P.C. was submitted by the I.O.

12. Sine the offences charges were exclusively triable by the Court of Sessions, the case of the accused was committed to that court for trial. The learned Sessions Judge charged accused Govind Ram alias Gopal Ram under Sections 302 and 307/34 I.P.C., while accused Kalawati Devi and Suresh Ram were charged under Sections 302/34 and 307/34 of the I.P.C. to which the accused pleaded not guilty and claimed to be tried.

13. The prosecution in order to bring home the guilt to the accused produced as many as five witnesses in the case. Out of them, P.W.1, Dr. R.S.Agrawal is the Medical Officer who examined the injuries on the person of the injured, referred to above, and he prepared the injury reports. P.W.2, Dr. P.K.Karnatak, is the autopsy surgeon, who conducted Post Mortem on the dead body on

25.3.1990. P.W.3, Roshan Lal, and P.W.4, Lalit Mohan, are the injured witnesses, who suffered injuries in the occurrence. P.W.5, Sher Singh Chaudhary, Patwari Kalukhan, is the Investigating Officer of the case. In documentary evidence, the prosecution filed documents, Exts. Ka-1 to Ka-15 besides producing material exhibits, marked Ext. 1 to Ext. 14.

14. P.W.1, Dr. Ravi Shankar Agarwal, is Medical Officer, who examined the injuries of injured Roshan Lal and Lalit Mohan on 25.3.1990 at Primary Health Centre Lohaghat, which have been referred to above. P.W.1 proved the injury report Ext. Ka-1 and Ka-2 respectively. When cross-examined he conceded that both the injuries on the person of Roshan Lal may be sustained by fall head upside down. He, however, admitted that there could be variation of 2-4 hours in the duration of injuries mentioned by him in the injury reports.

15. P.W.2 Dr. P.K.Karnataka is the autopsy surgeon, who was posted at the relevant time at P.H.C. Champawat. He conducted Post Mortem on the dead body of Dev Ram as mentioned earlier. P.W. 2 has proved the post mortem report in his testimony. He was cross-examined and he clarified 'Barchha' means a sharp edged weapon with pointed head and the width of the weapon may be to the extent of 6 inches. He also admitted that the duration of ante mortem injuries could be 2 days at the time of autopsy.

16. P.W.3, Roshan Lal, is the son of the deceased and an injured witnesses as well as scribe of the F.I.R. In his testimony, he stated that the accused were known to him from before. Accused Govind Ram is the real cousin of his father. Regarding actual occurrence, he has stated that on 24.3.1990 at about 8 a.m., he was proceeding to Gambhir Gaon to seek engagement as a daily wage labourer. When he reached about 20.25 yards ahead of the house of Govind Ram, his brother Lalit Mohan was following him. He heard cries of his brother. On this, he turned towards the house of Govind

Ram and saw that Govind Ram, accused, was giving blows by Barchha to his father deceased Dev Ram. He hurriedly went there and snatched the 'Barchha' from the accused. His father had fallen down after suffering injuries. He then took up his father. In the mean time, Suresh Ram (son of Govind Ram) assaulted him on the head by means of 'Chhura'. He further stated that Govind Ram and Kalawati were assaulting Lalit Mohan and the occurrence was seen by him from a distance. Govind Ram was having a Chhura and Kalawati was having a Lathi. He also stated that his father was also proceeding for labour work where he was going. Accused persons after assaulting the victims ran away towards western side. Injured Govind Ram was brought to the house where he succumbed to his injuries. He went to the 'Sabhapati' but he was not available. Then he prepared the written report (Ext.Ka-4) and went to the Patwari and delivered him the report. He further stated that accused Govind Ram imputed illicit relations of his daughter-in-law (wife of Diwan Ram) with his brother Lalit Mohan and due to enmity they were assaulted.

17. P.W.4, Lalit Mohan is another injured witness who suffered injuries in the incident. Regarding the occurrence, he stated that he was going to school and his brother Roshan Lal was going for work ahead of him while his father Dev Ram was coming. When he reached in front of the house of accused Govind Ram he found that Govind Ram and his wife started hurling abuses on him and Govind Ram caught hold of him and dragged him to his 'Angan', where Kalawati and Govind Ram assaulted him. Kalawati was having Lathi in her hand and Govind Ram was armed with 'Chhura'. In the incident, Govind Ram gave 'Chhura' blow on his head and the lathi blow by Kalawati struck the Jhola hanging on his shoulder. He raised hue and cry whereupon his father came from behind and he intervened by saying as to why they were beating his son. Thereupon accused Govind Ram took out the Barchha from his house and gave its blow to his father who fell down on the ground. His brother Roshan Lal appeared there and he snatched the Barchha

from accused Govind Ram and threw it away, whereupon accused Suresh Ram assaulted his brother by the Chhura which was thrown by the accused Govind Ram. The accused left the place leaving Dev Ram in a dying condition. Thereafter they took Govind Ram to the house where he died. He denied any illicit relations with the daughter-in-law of Govind Ram.

18. P.W.5, Sher Singh Chaudhary, Patwari Kalukhan, is the Investigating Officer of the case. In his statement, P.W.5, has proved investigation part of the case.

19. Accused were examined under Section 313 Cr.P.C. in his statement, accused Govind Ram admitted that deceased Dev Ram was his real cousin. He denied illicit relations between the wife of Diwan Ram (son of the deceased) with witness Lalit Mohan P.W. 4 and alleged his false implication out of enmity. In reply to the last question, he stated that he is lame person and can move with the help of stick only. Same stand was taken by co-accused Suresh Ram in his statement under Section 313 Cr.P.C. Smt. Kalawati also denied all the allegations levelled against her.

20. The learned Sessions Judge after perusing the entire evidence on record came to the conclusion that the evidence brought by the prosecution was not cogent and reliable as against the accused Smt. Kalawati and Suresh Ram, but the prosecution was successful in bringing home the guilt to the accused Govind Ram alias Gopal Ram. Accordingly, he acquitted the accused Kalawati and Suresh Ram, but convicted and sentenced the accused Govind Ram alias Gopal Ram under Sections 302 and 323 IPC as aforesaid.

21. In support of the appeal, it has been contended on behalf of the accused-appellant that the learned Sessions Judge fell in error by convicting and sentencing the appellant on the basis of the same evidence on which the co-accused Smt. Kalawati and Suresh Ram were acquitted, therefore, the appellant also deserves to be

acquitted. On the other hand, the learned A.G.A. while supporting the impugned judgment submitted that the conviction and sentence against the appellant was based on proper appraisal of the evidence on record.

22. It is necessary to re-appreciate the evidence on record for just decision of the appeal. At the out-set, it may be mentioned that in the written report Ext. Ka-4, accused Suresh Ram has not been named. Report has been scribed by Roshan Lal, who also sustained injuries in the occurrence. It may be noted that eye-witnesses P.W.3 Roshan Lal and P.W.4 Lalit Mohan have not seriously urged that they saw co-accused Kalawati Devi assaulting any of the victims. P.W.4 Lalit Mohan though stated that Kalwati was having Lathi, but his brother Roshan Lal has stated that he did not see any Marpit before he reached at the spot. Participation of Kalawati Devi in the crime is not supported by any cogent, reliable and credible evidence and her participation in the actual crime is doubtful as held by the learned Sessions Judge, therefore, no weight can be given to the contention of the learned counsel for the appellant that the case of the accused-appellant Govind Ram alias Gopal Ram is at par with that of co-accused Kalawati and since she was acquitted the appellant is also liable to be acquitted.

23. In this case, the accused-appellant was named along with his wife Kalawati Devi in the First Information Report (Ext. Ka-4), lodged by Roshan Lal. He has given ocular account of the occurrence. He is an injured witness. P.W.3 has testified that on the fateful day, he was proceeding to village Gambhir Gaon for work and had gone 20-25 yards ahead of the house of the accused at about 8 a.m. He was followed by his brother Lalit Mohan P.W.4, who raised hue and cry. On this, he turned towards the house of the accused and saw that accused Govind Ram was assaulting his father with Barchha. He went at the spot and snatched the Barchha from the accused. He took his father to the house, who had fallen on the ground. In the meantime, co-accused Suresh Ram gave Chhura blow

on his head. As soon as his father was brought to his house, his father succumbed to his injuries. He then went to the Pradhan of the village who was not available. He has however alleged that accused were entertaining enmity on account of illicit relations of Lalit Mohan with the wife of Diwan Ram, the son of the accused. He has also stated that Govind Ram suspected Lalit Mohan was having illicit affairs with the wife of his son Diwan Ram. In his cross-examination, the witness denied the specific suggestion made to him by the defence and in reply, the witness stated that it is wrong to say that he, his father and his brother went to the house of the accused and that they pushed the door of their 'Goth'. The witness denied that at that time he was having a knife and that the accused persons tried to bolt the door from inside and they while pushing the door his father sustained knife injury of his own. He also denied that Govind Ram and Suresh Ram are lame and that they cannot move without the help of stick. He also denied that in pushing the door he fell down and received injuries while his brother suffered injuries from the door. The learned Sessions Judge has already dealt with this suggestion in the impugned judgment at the latter part of page no.6. The motive for the crime stood established by the prosecution. He was further cross-examined but nothing favourable to the appellant could be brought on record by such cross-examination.

24. Another eye-witness examined by the prosecution is P.W.4, Lalit Mohan. Regarding actual occurrence, P.W.4 has stated that at about 8 a.m. on 24.3.1990, he was going to school. Roshan Lal was ahead of him and he (P.W. 4) was being followed by his father Dev Ram. When he reached in front of the house of accused Govind Ram the accused and his wife started abusing him and accused Govind Ram dragged him to his court-yard and both of them assaulted him. Kalawati was having Lathi and Govind Ram was armed with Chhura. Govind Ram gave Chhura blow on his head, while Kalawati wielded Lathi. In the meantime his father came there and asked the accused as to why they were beating his son. Then Govind Ram took out the Barchha from his house and gave blow on

the head of his father with the result Dev Ram suffered injury and fell down. His brother Roshan came there and he snatched **Barchha** from the accused Govind Ram and threw it. Suresh Ram gave Chhura blow to his brother. Then the accused persons ran away presuming Dev Ram dead. This witness denied that he himself, his father and brother went to the house of the accused to beat them.

25. Dr. Ravi Shankar Agarwal, Medical Officer, has been produced to prove the injuries on the person of the injured which has already been referred to above.

26. Dr. P.K.Karnatak, P.W.6, conducted autopsy on the dead body of Dev Ram on 25.3.1990 at 3.30 p.m. In his testimony, this witness has proved the Post Mortem Report, Ext. Ka-3. The evidence of the injured witnesses P.W.3, Roshan Lal and P.W.4 Lalit Mohan finds corroboration from the medical evidence.

27. P.W.5, Sher Singh Chaudhary, Patwari, is the Investigating Officer of the case. P.W.5 has fully proved the investigation part of the case. Patwari after lodging of the F.I.R. went at the spot and took the dead body in his custody. He conducted inquest proceeding and prepared inquest report, Ext. Ka-6. Thereafter, the Investigating Officer prepared photo Lash, challan Lash and sent the dead body for Post Mortem through his peon. The I.O. prepared the site plan of the place of occurrence Ext. Ka-10 and noted Khasara therein. He also collected the blood stained and plain earth from the spot and sealed it and prepared memo Ext. Ka-11. He got the injured persons medically examined on 25.3.1990. On 1.4.1990, he arrested accused Suresh Ram and Kalawati Devi and accused-appellant Govind Ram was arrested on 9.4.1990. The Investigating Officer took in his custody the blood-stained Baniyan of injured Lalit Mohan on 31.3.1990 and prepared Fard ext. Ka-12. The I.O. also took in his possession the blood-stained clothes of accused-appellant Govind Ram and prepared Fard Ext. Ka-13. He

recorded the statements of witnesses and after completing the investigation submitted charge-sheet Ext. Ka-14, against the accused.

28. From the ocular account of the occurrence given by the injured witnesses P.W. 3 Roshan Lal and P.W.4 Lalit Mohan, it is evidence that they both stated that it was the accused Govind Ram alias Gopal Ram, who gave a Barchha blow to their father Dev Ram. The Barchha wielded by Govind Ram hit Dev Ram at his left chest on the upper side towards neck, which is a vital part. The Post Mortem Report, Ext. Ka-3 shows that he sustained single incised wound 6 cm x 2 cm at the left deltopectorial region, 4 cm. medial to deltopectorial groove pleural cavity deep. Barchha is a sharp-edged weapon. In our opinion, this injury was fatal to the victim. The autopsy surgeon, P.W.2, Dr. P.K.Karnataka, stated in unequivocal term that the ante mortem injury found on the person of Dev Ram could have been caused by a Barchha and the injury was sufficient to cause death in ordinary course of nature. On the fateful day Roshan Lal was ahead of all and he had passed by the house of the accused. Behind Roshan Lal, P.W.3, Lalit Mohan was going who was followed by his father Dev Ram at a close distance. From the prosecution evidence it comes out that accused Govind Ram suspected that Lalit Mohan, P.W.4 had developed illicit relations with his daughter-in-law. Natural at the relevant time accused Govind Ram availed of the opportunity to teach a lesson to Lalit Mohan when he passed in front of his house. He caught hold of him, abused him and then assaulted him. Seeing Lalit Mohan in the grip of accused Dev Ram, the father of P.W.3 and P.W. 4 rushed to his rescue as they were closely following each other at that time. It was Dev Ram who intervened in the scuffle. Accused-appellant got so annoyed that he even picked up the Barchha from the wall of his house and gave its blow to Dev Ram which ultimately proved fatal. The accused-appellant had no justification to give a Barchha blow on the chest of Dev Ram while he came forward to the rescue of his son Lalit Mohan. The act of the accused-appellant in taking the law in his hands thereby giving fatal blow by a Barchha to the deceased on

the suspicion that Lalit Mohan was having illicit affairs with his daughter-in-law was not at all justified. It was fully open to him to take legal action in that regard. Thus, the accused-appellant did commit the offence of murder punishable under Section 302 of the Indian Penal Code. Not only this, the accused-appellant Govind Ram alias Gopal Ram cause hurt on the head of Lalit Mohan and thus committed an offence punishable under Section 323 of the I.P.C.

29. It is true that there is no independent witness of the occurrence examined by the prosecution. The injured witnesses P.W. 3 Roshan Lal and P.W.4 Lalit Mohan are sons of the deceased Dev Ram. The prosecution evidence shows that the entire occurrence took place at the spur of moment when there was no other witness present to see the occurrence. presence of injured witnesses at the spot is guaranteed. Lalit Mohan, P.W. 4, sustained injury at the hands of the accused-appellant. In the facts and circumstances of the present case the testimony of the eye-witnesses cannot be thrown out for the simple reason that they are interested witnesses. We have very closely scrutinized their evidence. Accused Govind Ram has denied his arrest by the Investigating Officer as well as taking into custody of his blood-stained clothes. But the accused-appellant could not assign any reason for his false implication in the crime by the Investigating Officer. He could not explain as to how his clothes were stained with blood. In our considered view it is fully established on record that it was the accused-appellant Govind Ram who committed the murder of Dev Ram when he came to rescue his son Lalit Mohan. There was no justification for the accused to have assaulted the victim Dev Ram with a Barchha, who was not armed with any weapon and that too on the chest of the deceased. The intention of the accused-appellant to commit murder is fully established by the weapon wielded and seat of injury chosen. The injuries on the person of the witnesses P.W.3 and P.W.4 (Roshan Lal and Lalit Mohan respectively) were simple in nature. However, the injuries sustained by the witness P.W.3

Roshan Lal cannot be attributed to the act of the accused-appellant. It is probable that the injuries on his person could have been caused due to fall on the ground. The learned Sessions Judge appears to have fairly thrashed out the testimony of the eye-witnesses thereby participation of accused Kalawati and Suresh Ram in the crime was not accepted and both these accused were acquitted by extending benefit of doubt.

30. Having given out anxious thought to the entire facts and circumstances of the case, it is established that the F.I.R. was promptly lodged by the injured son of the deceased Dev Ram and the accused Govind Ram intentionally and knowingly committed the murder of Dev Ram besides causing hurt to Lalit Mohan, P.W.4. The eye-witness account given by P.W.3, Roshan Lal and P.W.4, Lalit Mohan, is fully corroborated by the medical evidence on record. The accused-appellant was, therefore, rightly convicted and sentenced by the learned Sessions Judge. The judgment and order under appeal does not require any interference by this Court and the same are fit to be affirmed.

31. In the result, the appeal has not merit and is liable to be dismissed.

32. The appeal is hereby dismissed. The impugned judgment and order dated 14-8-1991 convicting and sentencing the accused-appellant to imprisonment for life under Section 302 I.P.C. and R.I. for one year under Section 323 I.P.C. and the sentence to run concurrently is affirmed.

33. Accused-appellant Govind Ram alias Gopal Ram was granted bail by the High Court vide order dated 22.8.1991. His bail bonds are cancelled and the sureties are discharged. He shall be taken into custody to serve out the sentence awarded.

34. Let the record of the case be transmitted to the court below for compliance to be reported to this Court in two months.

(B.S.Verma, J.) (Irshad Hussain, J.)

RCP